BORA LASKIN LAW LIBRARY
3 1761 04863 3564

# ADVANCED CIVIL PROCEDURE

# CASES AND MATERIALS

## VOLUME III

**John W. Morden**

FACULTY OF LAW
UNIVERSITY OF TORONTO
2002

BORA LASKIN LAW LIBRARY
AUG 28 2002
FACULTY OF LAW
UNIVERSITY OF TORONTO

# ADVANCED CIVIL PROCEDURE

# CASES AND MATERIALS

## VOLUME III

**John W. Morden**

FACULTY OF LAW
UNIVERSITY OF TORONTO
2002

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/advancedcivilpro03mord

# ADVANCED CIVIL PROCEDURE

## VOLUME III

## TABLE OF CONTENTS

**APPEALS**


1. INTRODUCTION 1

[The history and future of, and policies relating to, appeals in civil cases: class discussion.]

2. THE RIGHT OF APPEAL 2

*Courts of Justice Act*, ss. 6,7,19,20,21 and 110 2

*Canadian Express Ltd v. Blair* (1991), 6 O.R. (3d) 212 (Div. Ct.) 5

*Yorkville North Development Ltd v. North York* (1988), 64 O.R. (2d) 225 (C.A.) 8

*Re Chesapeake and Ohio Railway Company, v. Ball,* [1953] O.R. 877 (C.A.) 12

*Dagenais v. Canadian Broadcasting Corp.*(1994), 120 D. L. R. (4th) 12 (S.C.C.) (Headnote only) 15

3. JURISDICTION OF THE COURT OF APPEAL FOR ONTARIO AND THE DIVISIONAL COURT 18

(a) Jurisdiction of Court of Appeal in Civil Cases – General 18

Memorandum on the Jurisdiction of the Court of Appeal for Ontario in Civil Cases, August 31, 1998 18

(b) The Final/ Interlocutory Distinction 50

*Hendrickson v. Kallio*, [1932] O.R. 675 (C.A.) 50

*Delany Boat Lines and Services Ltd v City of Barrie*, (1976), 15 O.R. (2d) 675 (C.A.) 55

*Laurentian Plaza Corp. v. Martin* (1992), 7 O.R. (3d) 111 (C.A.) 57

*Buck Bros. Ltd. v. Frontenac Builders Ltd.* (1994), 19 O.R. (3d) 97 (C.A.) 62

*Smerchanski v. Lewis* (1980), 30 O.R. (2d) 370 (C.A.) 70

*S. (R.) v. H. (R.)* (2000), 52 O.R. (3d) 152 77.1

*Schiowitz v. I.O.S. Ltd.*, [1972] 2 O.R. 262 (C.A.) 78

[Reform of the law respecting appeals from interlocutory orders: class discussion.]

4. THE POWERS OF AN APPELLATE COURT 81

*Courts of Justice Act*, ss. 119, 132, 133 and 134 81

*Re Pelech and Pelech* (1987), 38 D.L.R. (4th) 641 (S.C.C.) 82

*McNichol v. Ardiel* (1978), 22 O.R. (2d) 324 (C.A.) 95

*Sikora v. Asbestonos Corp Ltd.* (1974), 45 D.L.R. (2d) 715 (S.C.C.) 101

5. STANDARD OF REVIEW 103

(a) Questions of Law: what are? 103

*Canadian National Railway Company v. Bell Telephone Company of Canada*, [1939] S.C.R. 308 103

*Canadian Lift Truck Ltd. v. Deputy Ministry National Review* (1955), 1 D.L.R. (2d) 497 (S.C.C.) 110

*R v. Morin* (1992), 76 C.C.C. (3d) 193 (S.C.C.) 114

(b) Questions of Fact 121

*Stein v. The Ship "Kathy K " et al* (1975), 62 D.L.R. (3d) 1 (S.C.C.) 121
*Jaegli Enterprises Ltd v. Ankenman* (1981), 124 D.L.R. (3d) 415 (S.C.C.) 125

*Dominion Trust Company v. New York Life Insurance Company,* [1919] A.C. 255 (P.C.) 127

*Equity Waste Management of Canada v. Halton Hills (Town)* (1997), 35 O.R. (3d) 321 (C.A.) 133

*Gottardo Properties (Dome) Inc. v. Toronto (City)* (1998), 162 D.L.R. (4th) 574 (Ont. C.A.) 138

(b.1) Question of Mixed Fact and Law

*Housen v. Nikolaison* (2002), 211 D.L.R. (4th) 577 (S.C.C.) 141.1

(c) Discretion 142

[The nature and kinds of discretion: class discussion.]

Aldisert, *The Judicial Process- Readings, Material and Cases* (1976) at pp. 742-743. 142

*Silver v. Silver* (1985), 54 O.R. (2d) 591 (C.A.) 143

*Stoicevski v. Casement* (1983), 43 O.R. (2d) 436 (C.A.) 145

*Peel Non-Profit Housing Corporation v. McNamara* (1991), 2 O.R. (3d) 414 (Div. Ct.) 153

(d) Damages 155

*Woelk v. Halvorson* (1980), 114 D.L.R. (3d) 385 (S.C.C.) 155

*Mulroy v. Aqua Scene et al* (1982), 36 O.R. (2d) 653 (C.A.) 159

*Howes v. Crosby* (1984), 45 D.L.R. 449 (C.A.) 163

*Nance v. British Columbia Electric Railway Company Ltd.*, [1951] A.C. 601 (P.C.) 166

*Wade v. Canadian National Railway Company Ltd.*(1977), 80 D.L.R. (3d) 214 168

(e) Jury Verdicts 171

*Vancouver-Fraser Park District v. Olmstead* (1974), 51 D.L.R. (3d) 416 (S.C.C.) 171

*Graham v. Hodgkinson* (1983), 40 O.R. (2d) 697 (C.A.) 181

(f) No Substantial Wrong 190

*Leslie v. The Canadian Press,* [1956] S.C.R. 871 190

*Mann v. Balaban* (1969), 8 D.L.R. (3d) 548 (S.C.C.) 196

6. MOOTNESS 205

(This section deleted in year 2002 pages 205-221)

7. APPELLATE PROCEDURE 222

(a) Rules 61 and 63 222

(b) Time for appealing 240

*Re Permanent Investment Corporation Ltd. v. Township of Ops and Graham*, [1967] 2 O.R. 13 (C.A.) 240

*Re Blackwell*, [1962] O.R. 832 (C.A.) 243

(c) Stay Pending Appeal 259

(This section deleted in the year 2002 pages 259-309)

(d) Fresh Evidence and New Issues 310

*Mercer v. Sijan* (1976), 1 C.P.C. 281 (Ont. C.A.) and annotation 310

*R v. Stolar* (1988), 40 C.C.C. (3d) 1 (S.C.C.) 316

*R v. Rajaeefard* (1996), 270 O.R. (3d) 323 (C.A.) 326

*Canadiana Towers Ltd. v. Fawcett* (1978), 21 O.R. (2d) 545 (C.A.) 328

*Gray v. Cotic* (1983), 1.D.L.R. ($4^{th}$) 187 (S.C.C.) 332

*Perka v. The Queen* (1984), 13 D.L.R. (4th) 1 (S.C.C.) 335

(e) Where there is no trial transcript 339

*Morrison v. Aldridge*, [1933] O.W.N. 402 (C.A.) 339

(f) Where no reasons for the judgment under appeal have been given 343

*DeVos v. Robertson* (1997), 14 C.P.C. (4th) 105 (Ont. C.A.) 343

*R. v. Sheppard* (2002), 162 C.C.C. (3d) 298 (S.C.C.) 345.1

8. JURISDICTION TO RE-HEAR AN APPEAL 346

*Holmes Foundry Limited v. Village of Point Edward*, [1963] 2 O.R. 404 (C.A.) 346

9. APPELLATE ADVOCACY 348

(This section deleted for year 2002 pages 348-362)